



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 32384170

Date: JULY 29, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a musician who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field

through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

## II. ANALYSIS

The Petitioner is a musician primarily known for playing the trumpet. He has performed internationally with the band [REDACTED] and has appeared on their albums.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed he met five of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to published material, and display of the Petitioner’s work but that he had not satisfied the criteria associated with prizes or awards, membership, or leading or critical role. On appeal, the Petitioner maintains that he meets the evidentiary criteria the Director decided against. After reviewing all the evidence in the record, we conclude the Director came to the correct conclusion, although we determine the Petitioner is ineligible for different reasons.

We begin addressing two criteria in which we do not agree with the Director’s conclusions. First, we do not agree that the Petitioner has met the published material criterion. Then, we decide that the evidence offered for the awards criterion adequately fulfills the regulatory requirements.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).*

The Petitioner provided numerous articles and the Director determined that met this criterion’s requirements without offering any analysis. A review of the record leads us to a different conclusion and we will withdraw the Director’s favorable determination under this criterion.

Out of the several articles the Petitioner provided for the record, only two of them even mention his name, but neither is about him. Instead, those two articles are either about the band in which the Petitioner was a member or an event where he performed. The first article is titled, [REDACTED]

[redacted] and it appeared in the publication, *El Nacional*. This article is about the band [redacted] as a whole and the group's receipt of two silver medals in a competition. The article simply mentions the Petitioner's name among a list of all the band members. USCIS policy does not require that a foreign national and their work be the sole subject within the published material. However, it does require that the material "be about the person, relating to the person's work in the field, not just about . . . another organization and that organization's work. Any materials the petitioner submits must demonstrate the value of the person's work and contributions, and must not be solely focused on the employer or organization that the person is associated with . . . ." See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual>.

Coverage that is about a broader topic in which the Petitioner is merely mentioned does not demonstrate that the published material itself is "about the alien" and "relating to the alien's work in the field" as the regulation mandates. See *Mussarova v. Garland*, 562 F. Supp. 3d 837, 848–49 (C.D. Cal. 2022) (finding the published material criterion's requirements are not satisfied where the articles are about events in which a foreign national was associated but were not about them); *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 545 (S.D.N.Y. 2012) (finding that articles that are about a team or a competition and only briefly mention a foreign national do not satisfy the published material criterion); see also generally *Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at \*3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer). As this article is not about the Petitioner, it is unnecessary that we evaluate whether it qualifies as one of the required publication types.

Moving to the second article in which the Petitioner was mentioned, it was titled, [redacted] [redacted]" and it appeared in the publication *Corral de Comedias*. This article was about an award given to an orchestra where—again—the Petitioner's name is merely listed among other band members. For reasons similar to the first article, this one is not *about him* and related to his work in the field. The remaining articles are not about him and do not even mention his name, and we will not discuss them further. Accordingly, we withdraw the Director's favorable determination as it relates to this criterion.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner provided information relating to a [redacted] and the Director determined that the evidence did not meet the requirements of this criterion. The Director solely focused on whether the Petitioner's individual and group award—each as Silver Medal Winners—were issued for excellence in the field. The Director did not adequately justify why these awards were not issued for excellence in the field and we withdraw their adverse determination on this issue. Because the Petitioner demonstrated he was the recipient of an award that received national recognition for excellence in the field, we conclude his evidence is sufficient to meet this criterion's requirements.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

We agree with the Director's determination that the evidence in the record is sufficient to fulfill this criterion's requirements.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).*

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he is a member of an association in his field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

The Petitioner claims his membership in the Latin Academy of Recording Arts and Sciences (LARAS). The information from the LARAS website states that the "voting member" classification is for "creative or technical professionals" involved in recording music. Prospective voting members are required to provide evidence of at least six credits, or songs, released within the last five years. The organization further requires that at least 51 percent of the recordings are either in the Spanish or Portuguese languages. An additional requirement is proof of physical or digital album distribution. Prospective members are encouraged to send in as much information as possible including their biographies and any media about them, and LARAS reserves the right of admission and approves membership according to the evaluation of the materials submitted. We note the Petitioner did not offer the portion of the organization's bylaws that addresses membership types, the application for membership, or the academy's processes or standards for granting voting membership.

The Director determined that the Petitioner did not meet the requirements of this criterion because it does not require outstanding achievements, rather than volume of publications of music. On appeal, the Petitioner maintains that this organization requires outstanding achievements in order to be granted membership and, as he stated before the Director, lists their requirements as six released productions and at least 12 digital releases on syndicated streaming or online platforms. The Petitioner describes these activities as "a feat that most Musicians will go the whole of their career without accomplishing. The fact that this is a requirement of the association shows that it only admits outstanding members of the music industry." However, he did not offer objective evidence to corroborate those assertions. As it stands, the Petitioner has not demonstrated that the Director erred when they determined he failed to establish that this organization requires outstanding achievements of its members, and we agree with the Director on this point.

On the final issue that LARAS must utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, we are not persuaded by the Petitioner's circular and presumptive arguments, which follow:

Furthermore, the ultimate admission of any member into the Latin Recording Academy is fully at the discretion of the academy's voting members. As already discussed, in order to be a voting member, an individual must show that they have outstanding achievements within the music industry, and thus, in the field. Accordingly, [the Petitioner's] membership in LARAS as a Voting Member was determined by experts in the field that, themselves, have outstanding achievements and merit.

We note he did not demonstrate that voting members must show they have outstanding achievements within the industry, and he does not offer evidence from LARAS that prospective members' achievements are judged by recognized national or international experts in their disciplines or fields.

We conclude that the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. A critical role should be apparent from the Petitioner's impact on the entity's activities. The Petitioner's performance in any role should establish whether it was leading or critical for organizations, establishments, divisions, or departments *as a whole*. Ultimately, the leading or the critical role must be performed on behalf of the organization, establishment, division, or department that enjoys a distinguished reputation, rather than for a unit subordinate to these listed entities. *See generally 6 USCIS Policy Manual, supra, F.2(B)(1).*

USCIS policy reflects that organizations, establishments, divisions, or departments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *Id.* (citing to the definition of *distinguished*, *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/distinguished>). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

After considering the Petitioner's claims and evidence, the Director determined that he did not meet the requirements of this criterion. On appeal, the Petitioner continues to claim that he performed in a leading or critical role for the musical group [REDACTED]. He relies on the letter from the group's chief executive officer, [REDACTED] as well as a document titled Record Deal Memorandum.

We begin with Mr. [REDACTED] letter. Mr. [REDACTED] spoke highly of the Petitioner and his abilities. He indicated the Petitioner's work and performances had been critically important for the band. He noted that as the trumpet player of the group, the Petitioner was a fundamental component and an invaluable member of the group. He further signified that because the band is based on horned instruments, such as the trumpet, the Petitioner is a fundamental part of the backbone of each of their songs, and that the rest of the band relies on him to provide a strong melody that holds the song together.

Mr. [REDACTED] continued stating: "The whole song depends on [the Petitioner's] ability to maintain rhythm and harmony, and without a strong trumpet player and soloist like him, the band will go astray and the whole song will fall apart." We note it appears that Mr. [REDACTED] was generally describing one who occupies the lead trumpet position, but he never stated that outright and the Petitioner does not identify what evidence in the record might support that implication.

Nor does Mr. [REDACTED] persuade us how the Petitioner performs in a leading or critical role for the band. He claims:

[The Petitioner] is not only critically important to our performances, but leads [ ] contributing knowledge, experience and concept in many, if not most, of the songs that the group performs live to the public. In this way, he plays an indisputably essential role for the group to be able to perform the music that the band plays live to perfection, as well as being responsible for instructing each member of the band on how their individual parts fit into the musical production.

Although Mr. [ ] indicated the Petitioner “has contributed extremely valuable knowledge to the creation of the most successful songs of the band,” the record lacks material to corroborate these claims. The Petitioner does not identify material demonstrating that he leads the band through his contribution of “knowledge, experience, or concept” which might support Mr. [ ] assertions.

Correspondence from those with “personal knowledge of the significance of the person’s leading or critical role can be particularly helpful to officers in making this determination, so long as the letters contain detailed and probative information that specifically addresses how the person’s role for the organization, establishment, division, or department was leading or critical.” *See generally* 6 USCIS Policy Manual, *supra*, F.2(B)(1).

Again, Mr. [ ] letter does not sufficiently describe the Petitioner’s role in such a way. While making broad claims about his impact, Mr. [ ] letter lacks details about the Petitioner’s work and its effect on the band. Mr. [ ] does not provide relevant details, such as a significant number of performances in which the Petitioner was billed as a leader within the band, or how he was more instrumental than other band members, or how his role was more significant to the band than other members’ activities. The Petitioner’s evidence does not demonstrate how his role differentiated him from the numerous other of the band’s performers.

Moving to the Record Deal Memorandum, it reflected the Petitioner was to serve as “Principal Trumpeter” on an unspecified or unnamed album. But the Petitioner did not provide evidence that any such album was created, nor by extension did he establish sales figures for the album, both of which might add support for his claims under this criterion. And as a final note, we observe that Mr. [ ] did not mention this album when he discussed the Petitioner’s role for the organization.

Here, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the

“extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.